

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

-vs-

NO: CR 05-1849 JH

DANA JARVIS, et al,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Sentencing Hearing

March 24, 2009

BEFORE: HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

1 APPEARANCES

2 For the Plaintiff:

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22 JUDITH A. ROSENSTEIN, ESQ.
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Also present:

Probation Officers Anthony Galaz and Ron Travers

The defendant appeared in person.

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1 (Court in session at 11:00 a.m.)

2 THE COURT: Good morning. We're on the
3 record in USA vs Jarvis, CR-05-1849.

4 MR. BRAUN: Good morning, Your Honor.
5 James Braun and Steve Kotz on behalf of the United
6 States.

7 MS. ROSENSTEIN: Good morning, Your Honor.
8 Judith Rosenstein on behalf of Dana Jarvis, along
9 with Jody Neal-Post and Gary Mitchell.

10 THE COURT: I note that the defendant is
11 also present this morning.

12 MS. ROSENSTEIN: Yes, Your Honor.

13 THE COURT: All right. We're here on
14 sentencing. Are we ready to proceed?

15 MR. BRAUN: Yes, Your Honor.

16 MS. ROSENSTEIN: Your Honor, we're
17 wondering if the Court would allow the Marshals to
18 take the shackles off his ankles. They're tight
19 because I guess as we get older, he's beginning
20 to -- his legs are swelling up, and he's kind of in
21 pain. And I would really rather he not be sentenced
22 while he's in pain.

23 We've got three Marshals here, he's in a
24 red outfit, and I don't think he's going anywhere.

25 THE COURT: Well, typically I allow the

1 release of the writing hand when there's testimony
2 or argument or things of that nature. Otherwise, I
3 do tend to abide by the Marshals' recommendations.
4 So I don't want him to be in pain, but . . .

5 MS. ROSENSTEIN: Well, we're not asking
6 them to take the handcuffs off, just the leg
7 shackles. And I don't see how he could possibly get
8 out of the building or do anything if he's
9 handcuffed, if he's got handcuffs on and a red suit.

10 THE COURT: All right, I understand what
11 you're saying. And again, my practice is to abide
12 by the recommendations of the Marshals, unless again
13 there's need for handwriting. So I'll have to again
14 abide by the . . .

15 MS. ROSENSTEIN: Well, he'd like to make
16 some notes, if we could have that.

17 THE COURT: All right, let me ask you
18 this. Typically what I do is, as I said a moment
19 ago, I will allow the handwriting hand to be
20 released when there's testimony or argument or
21 things of that nature.

22 This doesn't seem to be that type of a
23 proceeding, so I'm just trying to understand what
24 the issue is.

25 MS. ROSENSTEIN: The issue is a little

1 humanity, Judge, that's all. This is a victimless
2 crime, no violence. He's been in custody for four
3 year, no violence, no violations, no problems
4 whatsoever. And he's pushing 60. He can't go
5 anywhere.

6 I don't see how -- I understand what the
7 rules are. It's just between us. There are no
8 other inmates here. And all we're asking is that we
9 treat him as a human being. If he were out of
10 custody, he wouldn't have the handcuffs on. He's in
11 custody for a lot of different reasons. I'm not
12 going to go into that.

13 But we're just asking that he be vaguely
14 comfortable while he's being sentenced to almost a
15 decade and a half of incarceration for his conduct.

16 THE COURT: All right. I understand the
17 request, and I will not require that the shackles be
18 removed from his ankles.

19 MS. ROSENSTEIN: Okay.

20 THE COURT: All right. As I indicated, we
21 are here on sentencing. I have reviewed the
22 objections and exceptions to the presentence report
23 that you filed on behalf of Mr. Jarvis,
24 Ms. Rosenstein.

25 And it appears to me -- you tell me if I'm

1 wrong. But it appears that most of the issues that
2 you were concerned with have been resolved. Is that
3 fair to say?

4 MS. ROSENSTEIN: That's fair to say.

5 THE COURT: All right. I will then ask
6 you, have you had an opportunity to review the
7 presentence report and addendum which most recently
8 was disclosed yesterday? Or excuse me, not
9 yesterday -- yes, yesterday, March 23rd.

10 THE DEFENDANT: Are you addressing me,
11 Your Honor?

12 THE COURT: No, Mr. Jarvis. I'm speaking
13 with your counsel.

14 MS. ROSENSTEIN: Yes, ma'am.

15 THE COURT: All right. You've had an
16 opportunity to review -- I understand there are no
17 factual objections, so that no evidentiary hearing
18 will be necessary this morning. Is that accurate?

19 MS. ROSENSTEIN: I don't believe there's
20 an evidentiary hearing necessary. I do have the
21 signed affidavit. And how we did it is Mr. Mitchell
22 witnessed his signature. And I believe that
23 Mr. Jarvis is prepared to swear to the accuracy of
24 the contents of the affidavit. I'd like to hand
25 that up to the Court.

1 THE COURT: All right. Let me ask, is
2 that the affidavit that was also submitted in one of
3 your papers?

4 MS. ROSENSTEIN: Yes, that's correct.

5 THE COURT: All right. I have reviewed
6 the affidavit.

7 MS. ROSENSTEIN: That's just the signed
8 one, Your Honor.

9 THE COURT: Yes, all right. The Court at
10 this time will adopt the factual findings that are
11 contained in the presentence report and addendum, so
12 that no evidentiary hearing will be necessary today.
13 But I will --

14 MS. ROSENSTEIN: Before the Court does
15 that --

16 THE COURT: Yes.

17 MS. ROSENSTEIN: -- with apologies for
18 interrupting, there is still an issue with regard to
19 the amount of drugs. We have agreed that it should
20 be level 36 for the purpose of the calculations.

21 However, Mr. Jarvis in his affidavit,
22 based on his own review of his own documents, as
23 well as his recollection of previous documents which
24 are not in the hands of the government, he believes
25 that it may be less.

1 It is our opinion, based on case law, that
2 the Court must make its own determination as to the
3 amount and determine in its determination what an
4 appropriate sentence would be pursuant to both the
5 guidelines and the statute, 3553(a) factors.

6 So in that regard, I would say that the
7 Court can either accept the parties' agreement or it
8 can make its own findings based on Mr. Jarvis'
9 affidavit. And I do have some case law here that
10 talks about that, if I may.

11 And I see that Mr. Braun is standing. So
12 if he would like to say something, please do.

13 THE COURT: Mr. Braun?

14 MR. BRAUN: Well, Your Honor, I don't know
15 if we need to go to the case law because the parties
16 have stipulated to the amount of marijuana that is
17 attributable to the defendant.

18 And moreover, because the parties have
19 stipulated to the ultimate sentence that is
20 appropriate in this case, the Court can simply find
21 under Rule 32(i)(3) that a ruling on this issue is
22 unnecessary either because the matter will not
23 affect sentencing or because the Court will not
24 consider it in sentencing.

25 I think the appropriate ruling would be

1 that it simply will not affect sentencing, so
2 there's no need to decide this dispute.

3 THE COURT: Any comment?

4 MS. ROSENSTEIN: The only comment I have
5 is that I believe that the Court has an obligation.
6 And the Court may find, based on all the materials
7 that the Court has, that you're prepared to do that.

8 But it's my feeling that the Court has to
9 make it own determination, no matter what the
10 parties have said, and that was the whole purpose of
11 this. What we're trying to do, very frankly, Your
12 Honor, is to show the Court that this plea agreement
13 that was made, although it was made pursuant to
14 Rule 11(c)(1)(C), that it is in fact a guideline
15 sentence based on other factors besides just the
16 parties' stipulation.

17 And we're not going back on our
18 stipulation, and I don't think we're going to
19 withdraw the plea. But it seems to me that the
20 Court can make a finding that the sentence that was
21 agreed upon is in fact pursuant to all the guideline
22 calculations, rules and application notes.

23 And that is spelled out in our reply
24 specifically, that if the Court believes that it's
25 less than 10,000 kilos, it's the bottom of the

1 guideline that applies if the Court agrees that
2 enhancement for money laundering should not be
3 applied. And I believe that it is certainly a
4 reasonable departure for the reasons that we said in
5 our reply, as well as in the other documents that we
6 filed.

7 If the Court believes that it will stick
8 with the stipulation of the parties that it's over
9 10,000, then the Court can do a departure of the
10 equivalent of two levels for his age, his health and
11 his postarrest rehab, which is also spelled out,
12 with one exception. We neglected to mention that
13 Mr. Jarvis, since he's been at Torrance County, has
14 been in charge of the printing room, print shop, and
15 prints all the documents for the entire jail.

16 And as the Court knows -- I think I
17 mentioned this -- I spoke with Deputy Warden
18 Rodriguez, who indicated to me that Dana has been a
19 great inmate. He's very helpful to the staff. He
20 calms things down. I think it's because he's more
21 mature. He's very intelligent. He recognizes the
22 situation he's put himself in, and he's trying to
23 make the best of it.

24 And I think that one of the disturbing
25 things is that he seems to be getting -- based on

1 guidelines and the law as it currently exists, he's
2 getting significantly more incarceration than people
3 who have acted out in violent ways on many
4 occasions.

5 I mean this is -- I'm getting ahead of
6 myself here. But that's basically what we're asking
7 the Court, to make the finding that -- assuming the
8 Court wants to accept the plea agreement, and I
9 think that's a fairly good assumption --

10 THE COURT: I do intend to accept the plea
11 agreement.

12 MS. ROSENSTEIN: -- that the Court makes
13 findings that it is pursuant to the guidelines for
14 the reasons that are outlined.

15 THE COURT: All right. I guess perhaps we
16 are both getting a little ahead of ourselves. Let
17 me just note that this is an 11(c)(1)(C) plea
18 agreement. And let me just be clear. I do accept
19 the plea agreement, and I do intend to sentence
20 Mr. Jarvis in accordance with the plea agreement.

21 So with that, if there are any other
22 comments that you'd like to make, Ms. Rosenstein,
23 please do.

24 MS. ROSENSTEIN: Yes, there are a few.

25 Basically what I want to say, it really

1 doesn't have much to do specifically with this case,
2 but kind of a generalized thing.

3 We, as a country, I think at some point
4 have to decide what we feel are our core values and
5 how we carry them out. And it seems to me that
6 based on the economic condition that this country is
7 in basically because of fraud, white collar fraud
8 and greed, we're in a situation where we have to
9 parse out our funds.

10 And when we incarcerate Mr. Jarvis, at the
11 moment we're talking about approximately \$25,000 a
12 year just for him. And that's if he's healthy. And
13 by the time he gets out, he will be almost 70 years
14 old. He already has significant medical problems.
15 And we're talking about just the four years over the
16 mandatory minimum. We're talking \$100,000 plus.

17 The drug trade in this -- and this is from
18 a number of cites on Google -- the US drug trade
19 last year, from '08 to '09, was about \$60 billion in
20 this country.

21 At the same time, according to pretty much
22 the same sources, white collar fraud was
23 \$1.2 trillion, trillion dollars. In 2008, the FBI
24 investigated 38 corporate investment frauds. So far
25 this year, in the first three months of this year,

1 that number has gone up to 2,400, of which 1,800 are
2 mortgage frauds. Since 1987, when the omnibus crime
3 bill, the drug laws, went into effect, prison costs
4 have gone up 127 percent.

5 And so what we're doing, we're
6 incarcerating this nonviolent gentleman who has
7 committed a victimless crime. And I'm not saying
8 that it's not a crime, and I'm not saying that it
9 wasn't his choice, a knowing choice. And I am not
10 saying that he doesn't deserve consequences for
11 making that very bad choice to violate the law. I'm
12 a very strong believer in consequences for our
13 conduct, and I'm a big believer in adults making
14 good choices if they can.

15 But being I'm talking about choices that
16 this nation can make, and it seems to me that when
17 we have -- just this morning he came in with a
18 fellow who committed what, eight --

19 THE DEFENDANT: I want to tell that story.

20 MS. ROSENSTEIN: Oh, okay. I'm sorry.

21 Well, I'll let you tell it.

22 But we have individuals who have committed
23 violent offenses, including murder, who get less
24 time or just a little bit more time.

25 In terms of marijuana, it's been legalized

1 in 13 states for medical purposes. It's clearly
2 from a scientific viewpoint, perhaps not from a
3 legal viewpoint, clearly different from many of the
4 other drugs that are illegal. It's used by millions
5 of people, including apparently Presidents, Supreme
6 Court Justices, lawyers, doctors, et cetera, as well
7 as other people.

8 So as I say, I think we have to make a
9 choice as to whether or not it's more important to
10 put people like Dana Jarvis in custody for long
11 periods of time or whether universal healthcare is
12 more important or supporting our infrastructure is
13 more important.

14 The only other things I wanted to ask for,
15 Your Honor, is if the Court would consider
16 recommending FCI Englewood, which is in Colorado,
17 which is fairly close to Mr. Jarvis' relatives here,
18 and he has some relatives that are in Colorado.

19 I have, if I can find it, an order. And
20 what I may need to do is just e-mail it to your
21 staff. But it's a court order that the parties are
22 asking the Court to sign allowing personal property
23 to be returned.

24 What Mr. Braun has indicated to me is
25 that -- and that's what I put in the order, so that

1 we would have it in writing -- that within the next
2 two weeks, he and Agent Stark or whoever will go
3 through the boxes that they have and determine
4 what's evidence and what can be returned. And that
5 will be done within a 30-day period after the --

6 MR. BRAUN: Thirty days.

7 MS. ROSENSTEIN: Well, you have to start
8 within two weeks, and you have 30 days thereafter.
9 So that's a total of six weeks.

10 MR. BRAUN: Okay.

11 MS. ROSENSTEIN: Is that what we agreed
12 to?

13 THE COURT: I trust that you'll let me
14 know if that's not what you --

15 MR. BRAUN: Well, what the government has
16 agreed to, and the order may be different, is that
17 we would return the personal items within 30 days.

18 If you have the stipulated order.

19 MS. ROSENSTEIN: I do.

20 MR. BRAUN: We went through a prior
21 version. So I'm not sure what the final version is.

22 THE COURT: Is that the final version?

23 MR. BRAUN: That's fine, Your Honor.

24 THE COURT: All right. I have reviewed
25 the order, and I have signed it.

1 MS. ROSENSTEIN: Thank you.

2 THE COURT: So that's one thing less off
3 your list.

4 MS. ROSENSTEIN: Two other requests, Your
5 Honor. There is, as the Court knows, a provision in
6 the law to deny federal benefits to Mr. Jarvis and
7 his family, based on the conviction for a drug
8 offense.

9 We're asking that the Court specifically
10 waive that statute and that the federal benefits can
11 be applied. By the time Mr. Jarvis is out, he will
12 be almost 70 year old. It is highly unlikely that
13 he will be able to find employment. All of his --
14 any valuable property that he has, the government
15 has already forfeited and he's already forfeited it
16 to the government.

17 He will have nothing when he comes out, so
18 he may well need those federal benefits just to
19 survive. So I would ask that the Court allow him to
20 get those benefits, if necessary.

21 And the last thing is because the case
22 will now be over, as far as Mr. Jarvis is concerned,
23 we're asking that the Court unseal all of the
24 non-CJA proceedings as they relate to Mr. Jarvis.

25 And if there's any document, which I do

1 not believe there is, that indicates the true name
2 of any of the CWs or CSs, I'm sure that Mr. Braun
3 will indicate that.

4 MR. BRAUN: We hadn't talked about that
5 before Court, and I'm not in a position right now to
6 give the government's position on unsealing all the
7 documents. I'd have to look back over the docket to
8 see what those documents were.

9 MS. ROSENSTEIN: Well, we're talking about
10 the documents that relate to Mr. Jarvis, and not
11 other defendants.

12 MR. BRAUN: We're talking about pleadings
13 that were filed in relation to the motion to
14 dismiss, that type of stuff. And I would need to
15 look at those documents again to see why they were
16 sealed in the first place before we state our
17 position.

18 MS. ROSENSTEIN: Well, I don't see that
19 there's any reason to seal anything, now that the
20 case is over, with the exception of the safety of
21 any of the CWs or CSs, who have nothing to fear from
22 Mr. Jarvis.

23 MR. BRAUN: I believe some of those
24 documents were actually sealed at the defense'
25 request because they supposedly contain

1 attorney/client privilege. So to the extent that
2 the defense is waiving that and withdrawing that
3 request, the United States would not object to that.

4 MS. ROSENSTEIN: Yes, we are.

5 THE COURT: All right. So with respect to
6 the unsealing of documents, then what you're
7 requesting is that any sealed pleadings relating to
8 Mr. Jarvis be unsealed, with the exception of any
9 information that may identify either CWs or CSs.

10 And to the extent that any of those
11 pleadings assert an attorney/client privilege,
12 you're waiving the privilege at this point?

13 MS. ROSENSTEIN: That's correct, except
14 with regard to CJA matters.

15 THE COURT: Except with regard to CJA
16 matters, all right.

17 MS. NEAL-POST: Judge, I think I can
18 clarify that. I think that the only pleading --
19 it's not even actually a pleading. Mr. Jarvis had
20 submitted a notebook of materials for the in-camera
21 review of Chief Judge Garcia. And I think that that
22 would be the only one that would be covered by
23 privilege.

24 THE COURT: All right. And then if I
25 understand, the government's position is the

1 government has no objection to the unsealing of the
2 materials submitted by the defendant which initially
3 had been deemed to be attorney/client privileged?

4 MR. BRAUN: That's correct. And I suppose
5 we wouldn't object to the unsealing of the related
6 government pleadings that were filed under seal
7 simply because the defense' pleadings had been filed
8 under seal.

9 But it's my understanding the defense
10 doesn't request unsealing of anything that relates
11 to the cooperating defendant, in that these are
12 confidential witnesses.

13 THE COURT: Right. That's my
14 understanding as well.

15 And they also don't waive any
16 confidentiality in the CJA pleadings?

17 MS. NEAL-POST: Right.

18 THE COURT: All right. So that appears
19 to --

20 MS. ROSENSTEIN: Right, that's it.

21 The only other thing I'd like to say is
22 that, as the Court may know, I've been practicing
23 law for a long time, doing criminal defense most of
24 it. And it was a pleasure to represent Mr. Jarvis.
25 He's a very intelligent person.

1 THE COURT: And I'm also glad that you
2 were able to jump back in here at the end to get
3 this finalized. So that was helpful as well.

4 I don't mean to cut you off,
5 Ms. Rosenstein. But if that concludes your
6 comments, then I will turn to Mr. Jarvis for any
7 comments that you would like to make.

8 THE DEFENDANT: Okay, Your Honor. Thank
9 you Mr. Braun, Mr. Kotz, Mr. Baca and everyone else.
10 I would like to put on the record a statement that I
11 accept responsibility for my actions. And I would
12 also like to mention that my request for the
13 Englewood facility, FIC Englewood outside of Denver,
14 in Lakewood, Colorado, is the destination for my
15 incarceration.

16 And I will tell the story about -- on the
17 way in from the Torrance County facility this
18 morning, in the back of the van I sat next to a man
19 who I had seen in the library frequently because we
20 have a common interest in ancient civilizations. So
21 we compare books, and we were talking.

22 And he's going for a plea hearing today,
23 and he's agreed to a 47-month sentence. His crime
24 was he's robbed eight banks. He's a bank robber,
25 and he's getting 47 months.

1 And I was going to say that compared to my
2 case as a nonviolent offense, first offense, the
3 presentence report, it says in the section Victim,
4 and it says none. And I believe the 168-month
5 sentence, 14 years for a first offense
6 marijuana-related charge, is really out of line.

7 And I just wanted to point out that
8 compared to the bank robber who I was sitting next
9 to moments ago, I think there's something wrong here
10 today. I think this is a problem here, and I don't
11 feel that justice is -- justice isn't happening
12 right here, right now. And that's all I have to
13 say.

14 And I thank you for putting up with almost
15 four years of probably 500 trees were cut down for
16 all the motions that we filed. And may I suggest
17 that the Court consider using hemp paper in the
18 future for their documents? It would save cutting
19 down a lot of forest. That's all.

20 THE COURT: I think Ms. Neal-Post is
21 singularly responsible for the death of many, many
22 trees in the forest.

23 THE DEFENDANT: Maybe 490 of those,
24 anyway.

25 MS. ROSENSTEIN: In her defense, she's

1 just doing to her job, Judge.

2 THE COURT: I'm not suggesting otherwise.

3 MS. ROSENSTEIN: I know.

4 THE DEFENDANT: These gals did a great job
5 for me. I want to put on record I appreciate the
6 hard work that they did and the many, many hours
7 that Ms. Post put in researching the law and
8 fighting on my behalf. Thank you.

9 MS. NEAL-POST: You're welcome.

10 THE DEFENDANT: And to Mr. Mitchell and
11 Mr. Romero and everyone else.

12 THE COURT: And I would just say that
13 everybody here has just been doing their job, and we
14 all understand that.

15 All right. Thank you for your comments,
16 Mr. Jarvis.

17 I will also note that I have reviewed the
18 statement that you submitted and all the materials
19 that were submitted in the sentencing pleadings that
20 I received.

21 THE DEFENDANT: All right. Thank you.

22 THE COURT: Mr. Braun, any comments from
23 the government?

24 MR. BRAUN: Your Honor, I would simply
25 note, as the Court is aware, Congress has determined

1 the appropriate penalty for trafficking marijuana.
2 And given the law as it is, we would submit that the
3 stipulated sentence is a reasonable one.

4 THE COURT: All right, yes. There were a
5 number of comments made today not only by
6 Mr. Jarvis, but also by Ms. Rosenstein. And I would
7 just say that I head what you had to say, and I
8 understand that you understand that that's not
9 something that this Court can address.

10 I understand that as you stated in your
11 comments, that's an issue for this country to
12 determine what this country's priorities and values
13 are. That's something that's not on the table in
14 front of this Court, so you'll have to take it up
15 with Congress.

16 MS. ROSENSTEIN: I agree with the Court,
17 and I understand that. Federal judges have a great
18 deal of power and influence, and so do the US
19 Attorneys. So I guess I was kind of hoping if
20 anybody agrees with me, that they will do the same
21 in terms of letting Congress know how we feel.

22 I think that probably the complaints of
23 federal judges caused us to have the safety valve.
24 I'm quite convinced of that. And I think that
25 Congress doesn't know the reality of what this Court

1 goes through day after day, sentencing people, and
2 what prosecutors go through, having to make
3 discretionary decisions about how to prosecute
4 people, and what defense counsel have to do to
5 represent people. And we get to see them as full
6 human beings and not just criminals.

7 THE COURT: All right.

8 MS. ROSENSTEIN: Thank you.

9 THE COURT: If there's no further comment,
10 then I will proceed to sentencing.

11 All right. The Court has reviewed the
12 presentence report and the factual findings. The
13 Court has considered the sentencing guideline
14 applications and the sentencing factors that are set
15 forth in 18 United States Code, Section 3553(a)(1)
16 through (7).

17 Now the offense level is 39, and the
18 criminal history category is 1, establishing a
19 guideline imprisonment range of 262 to 327 months.

20 However, under Rule 11(c)(1)(C) of the
21 Federal Rules of Criminal Procedure, the Court
22 accepts the plea agreement which includes a specific
23 sentence of 168 months, as the Court is satisfied
24 that the agreed sentence departs for justifiable
25 reasons.

1 The Court notes that the defendant
2 operated and supervised a drug conspiracy and was
3 accountable for the possession and distribution of
4 between 10,000 and 30,000 kilograms of marijuana.
5 The Court does accept the stipulation of the
6 parties.

7 So as to each of Counts 1 and 26 of the
8 superseding indictment, 1:05-CR-01849-001JH, the
9 defendant, Dana Jarvis, is committed to the custody
10 of the Bureau of Prisons for a term of 168 months.
11 Said terms will run concurrently. The Court will
12 recommend that the sentence be served at the FCI
13 Englewood, Colorado, facility.

14 Now as to Count 1 of the superseding
15 indictment, the defendant is placed on supervised
16 release for a term of five years. As to Count 26 of
17 the superseding indictment, the defendant is placed
18 on supervised release for a term of three years.
19 Said terms will run concurrently, for a total term
20 of five years.

21 Now the defendant must comply with the
22 standard conditions of supervised release and the
23 following mandatory conditions: The defendant will
24 submit to DNA collection, in compliance with
25 statutory requirements, while incarcerated in the

1 Bureau of Prisons or at the direction of the United
2 States Probation Office.

3 The defendant shall not possess, have
4 under his control or have access to any firearm,
5 ammunition, explosive device or other dangerous
6 weapons as defined by federal, state or local law.

7 The following special conditions will also
8 be imposed: The defendant must participate in and
9 successfully complete a substance abuse treatment
10 program, which may include drug testing, outpatient
11 counseling or residential placement.

12 The defendant may be required to pay a
13 portion of the cost of treatment and/or drug
14 testing, as determined by the Probation Office.

15 The defendant must refrain from the use
16 and possession of alcohol and other forms of
17 intoxicants and must not frequent places where
18 alcohol is the primary item for sale.

19 The defendant must submit to a search of
20 his person, property or automobile under his
21 control, to be conducted in a reasonable manner and
22 at a reasonable time, for the purpose of detecting
23 drugs, drug paraphernalia or any other contraband at
24 the direction of the Probation Officer. And he must
25 inform any residents that the premises may be

1 subject to a search.

2 The defendant must participate in and
3 successfully complete a mental health treatment
4 program, which may include outpatient counseling,
5 residential placement or prescribed medication as
6 approved by the Probation Officer. The defendant
7 may be required to pay a portion of the cost of this
8 treatment, as determined by the Probation Office.

9 The defendant must provide the Probation
10 Officer access to any requested financial
11 information, personal income tax returns,
12 authorization for release of credit information and
13 other business financial information in which the
14 defendant has a control or interest.

15 Now the defendant shall have no contact
16 with the co-defendants in this case, with the
17 exception of his daughter, Ayla Jarvis; the mother
18 of his child, Melania Kirwin; and his sister-in-law,
19 Cathy Fitzgerald.

20 Based on the defendant's lack of financial
21 resources, the Court will not impose a fine.

22 Consistent with the stipulation in the
23 plea agreement, the defendant forfeits his rights,
24 title and interest to the items and property noted
25 in paragraph 11 of the plea agreement.

1 The defendant shall pay a special
2 assessment of \$100 as to each count of conviction,
3 for a total of \$200, which is due immediately.

4 MS. ROSENSTEIN: That's already been paid,
5 Your Honor.

6 THE COURT: All right. I will note that
7 the special penalty assessment has already been
8 paid.

9 Pursuant to 18 United States Code,
10 Section 3742(a), within ten days of the entry of the
11 judgment you have the right to appeal the final
12 sentence of this Court, and you have the right to
13 apply for leave to appeal in forma pauperis if you
14 are unable to pay the cost of an appeal.

15 MS. ROSENSTEIN: Your Honor, may I make a
16 comment on some of the conditions and then ask the
17 Court to reconsider them?

18 THE COURT: Yes.

19 MS. ROSENSTEIN: Number one, the drug
20 treatment program I do not believe is in any way
21 necessary. There have been all sorts of scientific
22 studies that indicate marijuana is not an addictive
23 substance.

24 I can see that if the Probation
25 Department, who then supervises him, believes that

1 that's necessary, that would be fine. But I would
2 ask that the Court not make it mandatory unless it's
3 necessary.

4 By the time Mr. Jarvis is out, he will
5 have done 85 percent of 14 years. He will be in his
6 late sixties. And I really think it seems to be a
7 waste of time and money to have him participate in a
8 substance abuse program that is unnecessary.

9 With regard to the no alcohol, he had a
10 DWI from eleven, probably twelve years ago. I don't
11 think it's necessary for him to not have any
12 alcohol. If the Court wishes to prohibit him from
13 drinking and driving, I think that's quite
14 appropriate because he has to obey all laws. So I
15 don't think the prohibition against alcohol is in
16 any way necessary in this particular case.

17 And finally, allowing Probation to have
18 access to his financial records is generally a
19 provision for those who commit white collar crimes
20 and financial crimes. This is not a financial
21 crime. I mean there was a money laundering of 1,350
22 bucks, but I don't see that any of those three
23 things are necessary.

24 And we know that the Probation Department
25 is overworked and probably underfunded. And I would

1 like to see those three items back, unless they're
2 necessary. And the probation conditions or the
3 supervision conditions can always be amended if it's
4 necessary.

5 THE COURT: All right.

6 MS. ROSENSTEIN: And also the mental
7 health, as well. There's no indication whatsoever
8 that he has a mental health problem, other than
9 anxiety.

10 THE COURT: Mr. Jarvis.

11 THE DEFENDANT: Yes, Your Honor. I agree.
12 I don't feel that I'm going to need any drug
13 counseling or mental health counseling. The alcohol
14 is no problem. I don't plan on ever drinking or
15 every doing drugs again. I'm clean and sober now.
16 And I'm actually enjoying that, and that's the way
17 I'm going to stay.

18 I'm not going to sell marijuana ever
19 again, either, by the way. But as far as attending
20 drug counseling sessions after I'm released, I would
21 ask the Court if you could cross that part off. I
22 would appreciate it.

23 THE COURT: Let me hear from Mr. Braun.
24 Do you have a position on these issues?

25 MR. BRAUN: No, Your Honor. We would

1 simply defer to the Court.

2 THE COURT: All right, thank you.

3 Let me hear from Mr. Galaz.

4 PROBATION OFFICER GALAZ: Your Honor, we
5 would ask that Mr. Jarvis at least be subject to an
6 eval for possible mental health issues or alcohol or
7 drug issues. To my understanding, he hasn't had an
8 eval. And if the Court would at least make that
9 mandatory, then we could better evaluate for
10 supervision purposes if he needs substance abuse
11 treatment or mental health counseling.

12 MS. ROSENSTEIN: All right, that's fine.
13 That will be fine.

14 THE COURT: Okay. What I will do then is
15 I will modify my order to indicate that the
16 defendant must be evaluated, rather than must
17 participate in. So I will say the defendant must be
18 evaluated for substance abuse and mental health
19 further to be determined by the Probation Office.

20 MS. ROSENSTEIN: Yes, that will be fine.

21 THE COURT: I heard what you said about
22 the use of alcohol. And I also heard what
23 Mr. Jarvis said, that he doesn't intend to drink or
24 consume any form of intoxicants. I'm going to keep
25 that part of the order in for now.

1 MS. ROSENSTEIN: All right. And the Court
2 hasn't mentioned anything about the federal
3 benefits.

4 THE COURT: Well, before I get to that,
5 let me ask Mr. Galaz about the defendant's request
6 that I not require the disclosure of financial
7 information.

8 PROBATION OFFICER GALAZ: Your Honor,
9 given that the defendant pled to a money laundering
10 charge, we basically feel that it would be
11 appropriate that we could have access, since
12 finances were involved to some degree in this
13 offense.

14 THE COURT: All right. I'm looking to you
15 all for suggestions here. Is there some lesser
16 level of inquiry that would satisfy your purposes so
17 that if need be, you could take it to the next step,
18 Mr. Galaz, Mr. Travers?

19 PROBATION OFFICER TRAVERS: I don't
20 believe there is a lesser level, Your Honor. What
21 we want to be able to do is just have access to
22 Mr. Jarvis' finances just to ensure that he does not
23 engage in future criminal activity.

24 Given the nature of the instant offense,
25 the fact that there was not only drug trafficking,

1 but there was a money laundering count, I think it's
2 appropriate that we have the authority to at least
3 look into his finances, credit bureau checks, review
4 tax records, that sort of thing, again just to
5 ensure that there's no future illegal activity
6 taking place. Not that we anticipate such a thing,
7 but it's just a precaution.

8 THE COURT: All right, I understand.

9 MS. ROSENSTEIN: That's fine, Your Honor.

10 THE COURT: All right, which then leads us
11 to the issue of federal benefits. Again, let me
12 hear from Mr. Braun first.

13 MR. BRAUN: I believe that's in the
14 Court's discretion, and the government would not
15 oppose or not deny the defendant federal benefits.

16 THE COURT: All right. Is there any
17 further comment from Probation?

18 PROBATION OFFICER GALAZ: Your Honor, just
19 pursuant to 21 USC 862, any grant, contract, loan,
20 professional license or commercial license provided
21 by an agency of the United States --

22 THE COURT: Wait. Could you slow down?

23 PROBATION OFFICER GALAZ: -- or by
24 appropriated funds of the United States. But with
25 regards to federal benefits, it does not include any

1 retirement, welfare, Social Security health,
2 disability, veterans' benefits, public housing or
3 similar benefits or any other benefit for which
4 payments or services are required for eligibility.

5 So he should be still eligible for Social
6 Security and disability and things of that nature.

7 MS. ROSENSTEIN: Well, what does it
8 prevent, if all those things -- it says federal
9 benefits.

10 PROBATION OFFICER GALAZ: Any grant,
11 contract, loan, professional license or commercial
12 license provided by an agency of the United States
13 or by appropriated funds of the United States.

14 And that's in paragraph 217 of the third
15 amended PSR, Your Honor. It gives more detail.

16 THE COURT: All right. Yes, 217 says
17 federal benefit as defined in 21 United States Code,
18 Section 862b, to mean any grant, contract, loan,
19 professional license or commercial license provided
20 by an agency of the United States or by appropriated
21 funds of the United States.

22 But it does not include any retirement,
23 welfare, Social Security, health, disability,
24 veterans' benefits, public housing or similar
25 benefits or any other benefits for which payments or

1 services are required for eligibility. So I'm just
2 not . . .

3 MS. ROSENSTEIN: Well, for example, Your
4 Honor, the United States it says any grant. Let's
5 just say, and I'm just supposing, that after all of
6 this time in custody, Mr. Jarvis has learned a great
7 deal about dealing with inmates and perhaps wants to
8 begin a program for rehabilitating inmates and he
9 would need a grant for that.

10 It's unlikely that he will need any of
11 those things. But I don't see any reason to deny
12 him those just because in his -- you know, 20 years
13 before, he sold pot. By that time, it might be
14 decriminalized. I don't know.

15 THE COURT: Is there any other comment?

16 PROBATION OFFICER GALAZ: No, Your Honor.
17 I've never encountered this in my time as a
18 probation officer here. We leave that to the
19 Court's discretion.

20 THE COURT: All right. I will then
21 exercise my discretion by not requiring that
22 Mr. Jarvis be denied federal benefits.

23 MS. ROSENSTEIN: Thank you very much, Your
24 Honor.

25 THE COURT: Based on what I've heard here

1 today, it doesn't sound to me like in any event
2 Mr. Jarvis would be denied the federal benefits that
3 most of us are accustomed to thinking of when we
4 think of future or federal benefits involving people
5 who are around the age of 70 or older.

6 And moreover, to the extent that the
7 government is willing to engage Mr. Jarvis in the
8 hypothetical, I don't see where there's a downside
9 to that. So I will affirmatively state that my
10 order will not deny Mr. Jarvis federal benefits.

11 MS. ROSENSTEIN: Thank you.

12 MS. NEAL-POST: Let me --

13 THE COURT: Yes. Were you going to say
14 something else?

15 MS. NEAL-POST: Judge, if I could for a
16 moment, I'd like to suggest something that might be
17 easier for the Court. If Mr. Braun and I put
18 together an order on the unsealing with the docket
19 numbers in the 1600 entry docket, I think it would
20 be clearer for everyone.

21 THE COURT: I would appreciate that,
22 actually. That way, we all know exactly what we're
23 talking about.

24 MS. NEAL-POST: Mr. Braun and I will take
25 care of that.

1 MR. BRAUN: That's fine.

2 THE COURT: All right. So I'll expect
3 something from you all with respect to the request
4 that certain documents be unsealed.

5 Let me ask counsel: Is there any reason
6 that sentence should not be imposed as I've stated
7 it?

8 MR. BRAUN: No, Your Honor.

9 THE COURT: Ms. Rosenstein?

10 MS. ROSENSTEIN: No, ma'am. Thank you
11 very much.

12 THE COURT: The Court will order sentence
13 imposed as stated. So if there's nothing further to
14 come before the Court, we'll be in recess.

15 (Court in recess at 11:47 a.m.)
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I, Paul Baca, Official Court Reporter for
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I FURTHER CERTIFY that I am neither
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